




IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: JALILAH OTTO	Case Number: 1416-CV10367
Plaintiff/Petitioner: MILADY R. PETERS	Plaintiff's/Petitioner's Attorney/Address, or Plaintiff/Petitioner, if pro se: ALAN J. STECKLEIN 748 ANN AVENUE KANSAS CITY, KS 66101 (913) 371-0727
Defendant/Respondent: FINANCIAL RECOVERY SERVICES INC.	Date, Time, and Location of Court Appearance: 04-JUN-2014, 09:00 AM DIVISION 26 7TH FLOOR 415 E 12th KANSAS CITY, MO 64106
Nature of Suit: AC Misc Associate Civil-Other	

(Date File Stamp)

Associate Summons for Service by Registered or Certified Mail

<p>The State of Missouri to: FINANCIAL RECOVERY SERVICES INC. Alias:</p> <p>CT CORPORATION SYSTEM 120 SOUTH CENTRAL AVENUE CLAYTON, MO 63105</p>	
<p>COURT SEAL OF  JACKSON COUNTY</p>	<p>You are summoned to appear before this Court on the date, time, and location above, to answer the allegation in the petition filed by the above-named Plaintiff/Petitioner, a copy which of which is attached. If you fail to appear at the time and place stated in this summons, judgment by default will be taken against you for the relief demanded in the petition.</p> <p>If you have a disability requiring special assistance for your court appearance, please contact the court at least 48 hours in advance of scheduled hearing.</p> <p><u>07-MAY-2014</u> Date Issued</p> <p>Further Information:</p>
<p>Certificate of Mailing</p> <p>I certify that on <u>07-MAY-2014</u> (date), I mailed a copy of this summons and a copy of the petition to Defendant/Respondent FINANCIAL RECOVERY SERVICES INC. by registered or certified mail, requesting a return receipt by the addressee only, to the said Defendant/Respondent at the address furnished by Plaintiff/Petitioner.</p> <p><u>07-MAY-2014</u> Date</p>	

Clerk

Clerk

SUMMONS/GARNISHMENT SERVICE PACKETS ATTORNEY INFORMATION

Under the Missouri e-filing system now utilized by the 16th Judicial Circuit Court, once a case has been accepted for filing, a clerk prepares the necessary documents for service. The summons/garnishment is sent to the attorney by an e-mail containing a link so that the filer may print and deliver the summons/garnishment, pleadings and any other necessary documents to the person designated to serve the documents.

Pursuant to State statutes, Supreme Court Rules and Local Court Rules, attorneys are required to print, attach and serve specific documents with certain types of Petitions and other filings.

Please refer to the Court's website for instructions on how to assemble the service packets at:

16thcircuit.org → Electronic Filing Information → Required Documents for Service – eFiled cases → Summons/Garnishment Service Packet Information.

Please review this information periodically, as revisions are frequently made. Thank you.

Circuit Court of Jackson County

1416-CV10367

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION**

Milady R. Peters,

Plaintiff,

vs.

Financial Recovery Services Inc.,

Defendant.

Case Number: _____

Division: _____

PETITION

Comes now Plaintiff Milady R. Peters and for Plaintiff's Petition against Defendant Financial Recovery Services Inc., hereby alleges as follows:

COUNT I

**(Demanding interest for which Defendant is not entitled by contract or law -
Violation of the Fair Debt Collections Practices Act - 15 U.S.C. §1692 et seq.)**

1. Plaintiff is a natural person residing in Missouri.
2. Defendant regularly conducts business in the state of Missouri.
3. Plaintiff is a "consumer" as defined by 15 U.S.C. §1692a(2) and is alleged to have owed a "debt" of a personal, family, or household nature, as defined by 15 U.S.C. §1692a(5).
4. Defendant is regularly engaged in the third-party collection of consumer debt and are "debt collectors" as defined by the Fair Debt Collection Practices Act (hereafter FDCPA), at U.S.C. §1692a(6).
5. Defendant is engaged in the business of purchasing and collecting "charged-off" consumer accounts alleged to have been originally owed to others (hereinafter "originating creditor").
6. On January 8, 2014, Defendant demanded payment from Plaintiff,

alleging it was collecting for LVNV Funding LLC, a debt buyer, who now alleges that it stands in the shoes of GE Electric Capital Corp. and is entitled to enforce the account pursuant to that purchase. See Exhibit A.

7. Therefore, Defendant had assessed interest on the alleged debt after it was charged off by the original creditor, GE Electric Capital Corp.

8. The Truth in Lending Act (TILA) regulates the type of account at issue in this case.

9. TILA requires a creditor to send periodic statements to the debtor each billing cycle if there is an outstanding balance on an account where a finance charge is imposed. 15 U.S.C. §1637(b).

10. That required periodic statement must contain certain required information which describes what and how the creditor is assessing interest and finance charges. 15 U.S.C. §1637(b).

11. Consistent with 15 U.S.C. §1637(b), Regulation Z also requires creditors to "mail or deliver a periodic statement as required by [12 C.F.R.] §226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than \$1 or on which a finance charge has been imposed." *Id.* at 12 C.F.R. §226.5(b) (2)(i).

12. However, Regulation Z provides exceptions to this requirement that periodic statements be sent and enables creditors to *not* send those required periodic statements if the creditor does certain things.

13. One of those exceptions is if the creditor has charged-off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account. *Id.* at 12 C.F.R. §226.5(b) (2)(i).

14. Therefore, under applicable regulations, GE Electric Capital Corp. was required to send periodic statements to Plaintiff until it "charged-off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account" 12 C.F.R. §226.5(b)(2)(I).

15. Previous to the alleged purchase of the account by the Defendant from GE Electric Capital Corp., GE Electric Capital Corp. charged-off an account alleged to have been incurred by Plaintiff.

16. Because GE Electric Capital Corp. had charged-off the account, it was not required to send periodic statements to Plaintiff, as would otherwise be required by law.

17. Therefore after charging-off the account, GE Electric Capital Corp. did not send any billing statements regarding the account to the debtor.

18. GE Electric Capital Corp. took advantage of the charge off exception to enable it not to be required to send periodic billing statements.

19. The legal tradeoff for entitling GE Electric Capital Corp. to take advantage of the charge off exception is that it was precluded by law from charging any additional fees or interest on the account.

20. Therefore, after the account was written off, GE Electric Capital Corp. was precluded by law from charging additional fees or interest on the account because it had not sent out the periodic statements.

21. Furthermore, GE Electric Capital Corp. had therefore waived its right to charge interest on the charged off account. *Simkus v. Cavalry Portfolio Services, LLC*, WL 1866542 (ND Ill. 2012); *McDonald v. Asset Acceptance LLC*, Case No. 2:11-cv-13080, (ED Michigan 2013).

22. Defendant professes to be in the same shoes as GE Electric Capital Corp.

23. Defendant would not acquire any greater rights than GE Electric Capital Corp. had at the time of the alleged purchase.

24. At the time of the alleged purchase, GE Electric Capital Corp. did not have the legal right to charge interest.

25. There is no legal basis for Defendant to charge interest on the charged-off account for which GE Electric Capital Corp. failed to maintain periodic statements.

26. By demanding that interest was due for which there was no legal basis, Plaintiff violated 15 U.S.C. §1692f, which prohibits a debt collector from the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

27. The Plaintiff was attempting to collect a consumer debt as defined by 15 U.S.C. §1692a(5) as an obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

28. The standard in determining whether the Plaintiff violated the FDCPA is the least sophisticated consumer standard. Claims should be viewed from the perspective of a consumer whose circumstances make him relatively more susceptible to harassment, oppression or abuse. *Schweizer v. Trans Union Corp.*, 136 F.3d 233, 237 (2nd Cir. 1998); *Swanson v. Southern Oregon Credit Service*, 869 F.2d 1222, 1225-27 (9th Cir. 1988); *Jeter*

v. Credit Bureau, Inc., 760 F.2d 1168, 1172 -75 (11th Cir. 1985); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991).

29. The above-described acts are misleading to the least sophisticated consumer.

30. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

31. As a result of the above violations of the stated Act, the Defendant is liable to the Plaintiff for actual damages; statutory damages up to \$1,000.00 pursuant to 15 U.S.C. §1692k; costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for actual damages; statutory damages pursuant to 15 U.S.C. §1692k; costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k; and for such other and further relief as may be just and proper.

Respectfully submitted,

By: /s/ A.J. Stecklein
A.J. Stecklein #46663
Consumer Legal Clinic LLC
748 Ann Avenue
Kansas City, Kansas 66101
Telephone: 913-371-0727
Facsimile: 913-371-0147
Email: AJ@KCconsumerlawyer.com
Attorney for Plaintiff

1416-CV10367

FINANCIAL RECOVERY SERVICES, INC.

DEPT 813 2516185114016
PO BOX 4115
CONCORD CA 94524

P.O. Box 385908
Minneapolis, MN 55438-5908
1-866-522-9395

RETURN SERVICE REQUESTED

January 8, 2014



JSH429
MILADY LYONS
10443 N CHERRY DR
KANSAS CITY MO 64155-5024



CLIENT: RESURGENT CAPITAL SERVICES LP
CURRENT CREDITOR: LVNV FUNDING LLC
ORIGINAL CREDITOR: GENERAL ELECTRIC CAPITAL CORPO
REGARDING: THE GAP
ACCOUNT NUMBER: XXXXXX XXXXXX9688
DATE OF LAST PAYMENT: 06/05/06
CHARGE-OFF DATE: 01/22/07

BALANCE ITEMIZATION

PRINCIPAL BALANCE: \$403.24
INTEREST BALANCE: \$486.92
BALANCE DUE: \$890.16
ON-LINE PIN NUMBER: 58434185

(Used to access and view your file on WWW.FIN-REC.COM)

*****WE ARE AUTHORIZED TO OFFER YOU THE FOLLOWING OPPORTUNITIES:

1. () ACCOUNT WILL BE PAID IN FULL BY A ONE-TIME PAYMENT EQUAL TO THE BALANCE; OR
2. () MY ACCOUNT WILL BE SETTLED IN FULL BY A ONE-TIME PAYMENT EQUIVALENT TO 50.00% OF THE ABOVE REFERENCED BALANCE IN THE AMOUNT OF \$445.08; OR
3. () MY ACCOUNT WILL BE SETTLED IN FULL BY THREE EQUAL CONSECUTIVE MONTHLY PAYMENTS EQUIVALENT TO 65.00% OF THE ABOVE REFERENCED BALANCE FOR A TOTAL REPAYMENT OF \$578.60; OR
4. () I WILL MAKE A MONTHLY PAYMENT THAT IS AFFORDABLE TO ME AT THIS TIME AS FOLLOWS, I WILL PAY \$ _____ MONTHLY UNTIL ANOTHER AGREEMENT IS NEGOTIATED. PAYMENTS WILL BE SENT ON OR BEFORE THE _____ OF EACH MONTH.

PLEASE MARK YOUR CHOICE WITH AN "X" IN THE SPACE PROVIDED AND FORWARD WITH YOUR PAYMENT TO THE ADDRESS LISTED BELOW OR PAY ONLINE. WE ARE NOT OBLIGATED TO RENEW OFFERS 2 THROUGH 4 ABOVE. FOR OFFERS 2 AND 3 ABOVE, WHEN YOU HAVE SATISFIED THIS AGREEMENT, THE ACCOUNT(S) WILL BE CONSIDERED SETTLED IN FULL FOR LESS THAN THE FULL BALANCE AND YOU WILL BE RELEASED OF ALL LIABILITY RELATIVE TO THE ABOVE LISTED ACCOUNT(S). LVNV FUNDING LLC IS REQUIRED BY THE IRS TO PROVIDE INFORMATION ABOUT CERTAIN AMOUNTS THAT ARE DISCHARGED AS A RESULT OF A CANCELLATION OF A DEBT ON A FORM 1099C. IF LVNV FUNDING LLC IS REQUIRED TO NOTIFY THE IRS, YOU WILL RECEIVE A COPY OF THE FORM 1099C THAT IS FILED WITH THE IRS. WE RECOMMEND THAT YOU CONSULT INDEPENDENT TAX COUNSEL OF YOUR OWN CHOOSING IF YOU DESIRE ADVICE ABOUT ANY TAX CONSEQUENCES WHICH MAY RESULT FROM THIS SETTLEMENT.

FRS NOW ACCEPTS SOME FORMS OF PAYMENT ONLINE AT WWW.FIN-REC.COM. YOU CAN PAY ONLINE AT WWW.FIN-REC.COM BY USING YOUR ABOVE PROVIDED PIN NUMBER AND THE FRS FILE NUMBER. YOU WILL NEED TO FOLLOW THE ONLINE INSTRUCTIONS TO MAKE AN ONLINE PAYMENT.

SINCERELY,
BRANDON MOLINA
ACCOUNT MANAGER
TOLL FREE: 1-866-522-9395

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Office hours are: Monday-Thursday, 7am to 8pm; Friday 7am to 5pm; Saturday 7am to noon.

DETACH AND RETURN THIS PORTION OF THIS NOTICE WITH YOUR PAYMENT

NOTE: ANY CHECK RETURNED FOR INSUFFICIENT FUNDS OR ACCOUNT CLOSED WILL BE ASSESSED A \$15.00 CHARGE.

Amount Enclosed: _____

MILADY LYONS
10443 N CHERRY DR
KANSAS CITY, MO 64155-5024

Home Phone: _____

Work Phone: _____

PLEASE CHECK YOUR PAYMENT OPTION BELOW:

- () PAID IN FULL - \$890.16
() SETTLED IN FULL - \$445.08
() SETTLED IN 3 EQUAL PAYMENTS
TOTALING - \$578.60
() MONTHLY PAYMENT PLAN OF:
\$ _____ BY _____ OF EACH MONTH

TOTAL BALANCE DUE: \$890.16

FRS File#: JSH429

1-866-522-9395

TOLL FREE: 1-866-522-9395

FINANCIAL RECOVERY SERVICES, INC.
P.O. BOX 385908
MINNEAPOLIS, MN 55438-5908



FRS003-0108-430582329-22057-22057

We are required under certain State and Local Laws to notify consumers of those States or Localities of the following rights. This list does not contain a complete list of the rights consumers have under Federal, State, or Local Laws.

ADDITIONAL INFORMATION FOR CALIFORNIA RESIDENTS

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

ADDITIONAL INFORMATION FOR COLORADO RESIDENTS

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE www.coloradoattorneygeneral.gov/ca

COLORADO OFFICE LOCATION: 717 17TH STREET, SUITE 2300, DENVER, CO 80202.
PHONE: 1-866-436-4768

A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATIONS WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

ADDITIONAL INFORMATION FOR MASSACHUSETTS RESIDENTS

NOTICE OF IMPORTANT RIGHTS:

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR.

IF YOU WISH TO DISCUSS THIS MATTER, PLEASE CALL US DIRECT, BETWEEN THE HOURS OF 8 A.M. AND 5 P.M. CST, AT THE NUMBER LISTED ON THE FRONT OF THIS NOTICE. MASSACHUSETTS RESIDENT OFFICE ADDRESS IS: 5230 WASHINGTON ST, WEST ROXBURY, MA 02132 WITH OFFICE HOURS: M-TH 10AM-3PM.

ADDITIONAL INFORMATION FOR MINNESOTA RESIDENTS

THIS COLLECTION AGENCY IS LICENSED BY THE MINNESOTA DEPARTMENT OF COMMERCE.

ADDITIONAL INFORMATION FOR NEW YORK CITY RESIDENTS

This collection agency is licensed by the New York City Department of Consumer Affairs. The license number is 1015505.

ADDITIONAL INFORMATION FOR NORTH CAROLINA RESIDENTS

North Carolina Department of Insurance permit number: 3917.

ADDITIONAL INFORMATION FOR TENNESSEE RESIDENTS

This collection agency is licensed by the Collection Service Board of the State Department of Commerce and Insurance.

ADDITIONAL INFORMATION FOR WISCONSIN RESIDENTS

This collection agency is licensed by the Division of Banking, P.O. Box 7876, Madison, Wisconsin 53707.

NOTICE TO ALL CONSUMERS

Our staff is trained to conduct themselves in a businesslike and professional manner, and to leave you with a positive experience in dealing with our Company. Please call (866) 438-2860 with your criticisms, complaints, suggestions and compliments. You may also enter them online at www.fin-rec.com. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.